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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,860	01/07/2004	Craig D. Cuttner	12510/31	6021
7590 KENYON & KENYON One Broadway New York, NY 10004		12/01/2009	EXAMINER HONG, HYUNJ	
			ART UNIT 2426	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/753,860

Applicant(s)

CUTTNER ET AL.

Examiner

Hyun J. Hong

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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DETAILED ACTION

This Office Action is in response to an Amendment filed on 08/10/09. Claims 1-, 3-36 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4-8, 12-17, 24, 26, 28, 29, 34, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2003/0146940) in view of Needham US 2003/0177495).

Regarding claim 1, Ellis discloses A method for displaying a media guide to a user, comprising:

receiving information regarding media programs which include: i) programs that are immediately available to the user via download or data streaming ([0043] via internet), and iii) programs that are immediately available to the user via television broadcast (via cable link [0043]), the information including titles of the media programs; and ([0006] Television broadcasts are comprised of streaming data.)

list of recommended titles (fig. 16b)

Ellis does not specifically disclose receiving information regarding ii) programs that have been previously stored locally relative to the user, displaying in a single integrated list of titles at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast.

However, Needham discloses receiving information regarding ii) programs that have been previously stored locally relative to the user ([0019, 0023]) displaying in a single integrated list of titles at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming ([0025], fig. 1), a title of at least one of the programs that have been previously stored locally relative to the user ([0019, 0023], fig. 1), and a title of at least one of the programs that are immediately available to the user via television broadcast ([0014], fig. 1).

It would have been obvious to combine the single integrated list of Needham into the program guide of Ellis. This provides the user with a more comprehensive program guide that informs the user of recorded programs in addition to other programs.

Regarding claim 3, Ellis discloses wherein the locally stored media programs include programs that are stored on a personal video recorder ([0056]).

Regarding claim 4, Ellis discloses The method according to claim 1, wherein available to the user via television broadcast include programs that are available to the user via at least one of: i) satellite broadcast, and ii) cable broadcast ([0006] "cable system headends" "satellite TV distribution").

Regarding claim 5, Ellis discloses the method according to claim 1, wherein the information includes data which describes content of the media programs, and wherein the method further comprises: comparing the data that describes the content of the media programs to data that describes user preferences, wherein the displaying step includes displaying the titles based on a result of the comparison ([0095]).

Regarding claim 6, Ellis discloses The method according to claim 5, further comprising: receiving the user preferences expressly from the user ([0085]).

Regarding claim 7, Ellis discloses The method according to claim 6, further comprising: determining the user preferences based on a viewing history of the user ([0010]).

Regarding claim 8, Ellis discloses The method according to claim 6, wherein the displaying step includes displaying titles of media programs that do not meet the user preferences and that meet a promotional priority of a service provider (fig 6 "selectable advertisement, [0066]).

Regarding claim 12, Ellis discloses The method according to claim 1, wherein the media programs further include media programs that are available to the user in the future (fig. 7 *Future times are listed on the media guide*).

Regarding claim 13, Ellis discloses the method according to claim 1.

However, Ellis does not disclose wherein the titles are displayed with a graphical indication of availability of the media programs.

In analogous art, Needham discloses wherein the titles are displayed with a graphical indication of availability of the media programs ([0025] "colors, icons").

It would have been obvious to combine the graphical indication of Needham into the media guide of Ellis. This makes it easier for the user to see the programs that are unavailable/available.

Regarding claim 14, Ellis in view of Needham discloses The method according to claim 13, wherein the graphical indication includes at least one of color shading and an icon ([0025] of Needham).

Regarding claim 15, Ellis does not disclose wherein the media programs include media programs that are available to the user in the future and programs that are stored locally, and wherein the graphical indication describes whether the media programs are one of immediately available for download or data streaming, immediately available via television broadcast, stored locally, and available in the future.

However, Needham discloses wherein the media programs include media programs that are available to the user in the future and programs that are stored locally, and wherein the graphical indication describes whether the media programs are one of immediately available for download or data streaming, immediately available via television broadcast, stored locally, and available in the

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future ([0025] of Needham). It would have been obvious to combine the graphical indication of Needham into the media guide of Ellis. This makes it easier for the user to see the programs that are unavailable/available.

Regarding claim 16, Ellis discloses The method according to claim 1, further comprising: in response to the user selecting one of the titles of the media programs, recording a television broadcast ([0048]).

Regarding claim 17, Ellis discloses The method according to claim 1, further comprising: in response to the user selecting one of the titles of the media programs, providing a media program via one of download and data streaming ([0006]).

Regarding claim 24, Ellis discloses a system, comprising:

A processor (42 of Ellis control circuitry);

At least one arrangement configured to communicate with the processor via a communications network (fig. 2b, fig. 4 of Ellis);

A computer-readable storing medium (memory 63, [0062] of Ellis) storing a set of instructions, the set of instructions capable of being executed by the processor to implement a method for displaying a media guide to a user, the set of instructions performing the steps of:

receiving information regarding media programs which include: i) programs that are immediately available to the user via download or data streaming ([0043] of Ellis via internet), and iii) programs that are immediately available to the user via television broadcast (via cable link [0043] of Ellis), the

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information including titles of the media programs; and ([0006] of Ellis Television broadcasts are comprised of streaming data.)

Ellis does not specifically disclose listing programs that have been previously stored locally relative to the user, and displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast.

However, Needham discloses listing programs that have been previously stored locally relative to the user, and displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a title of at least one of the programs immediately available to the user via download or data streaming, a title of at least one of the programs that have been previously stored locally relative to the user, and a title of at least one of the programs that are immediately available to the user via television broadcast ([0019, 0023] of Needham). It would have been obvious to combine the single integrated list of Needham into the program guide of Ellis. This provides the user with a more comprehensive program guide that informs the user of recorded programs in addition to other programs.

Regarding claim 26, see the rejection of claim 5.

Regarding claim 28, see the rejection of claim 14.

Regarding claim 29, see the rejection of claim 17.

Regarding claim 34, Ellis discloses the method according to claim 1, wherein all of the programs whose titles are included in the single integrated list of recommended titles are selected for inclusion of their titles in the single integrated list in accordance with at least one of promotional priorities, user program preferences, and user program experience history (fig. 16a-b of Ellis).

Regarding claim 35, see the rejection of claim 34.

Claims 9, 10, 11, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2003/0146940) in view of Needham US 2003/0177495) as applied to claim 1 and claim 24 respectively, further in view of Colsey (US 2003/005429).

Regarding claim 9, Ellis in view of Needham does not teach in response to the user selecting one of the titles of the media programs, displaying a preview of a media program associated with the selected title.

However, Colsey discloses in response to the user selecting one of the titles of the media programs, displaying a preview of a media program associated with the selected title ([0026]).

It would have been obvious to combine the previews of Colsey into the media guide of Ellis in view of Needham. This would allow users to quickly determine whether they want to watch a specific program.

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Regarding claim 10, Ellis in view of Needham does not disclose generating the preview based on flags transmitted from a central facility.

However, Colsey discloses generating the preview based on flags transmitted from a central facility ([0026] of Colsey) *The preview is stored and released by the EPG server.*) It would have been obvious to combine the previews of Colsey into the media guide of Ellis in view of Needham. This would allow users to quickly determine whether they want to watch a specific program.

Regarding claim 11, Ellis in view of Needham does not disclose receiving the preview with the media program associated with the selected title.

However, Colsey discloses receiving the preview with the media program associated with the selected title ([0026] of Colsey). It would have been obvious to combine the previews of Colsey into the media guide of Ellis in view of Needham. This would allow users to quickly determine whether they want to watch a specific program.

Regarding claim 27, see the rejection of claim 9.

Claims 18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2003/0146940) in view of Needham US 2003/0177495) as applied to claim 1, further in view of Schein (US 2003/0005445).

Regarding claim 18, Ellis in view of Needham does not disclose the method according to claim 1, further comprising: in response to the user selecting one of the titles of the media programs, displaying information related to

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the selected media program, the information includes at least one of actor data, director data and genre data.

In analogous art, Schein discloses the method according to claim 1, further comprising: in response to the user selecting one of the titles of the media programs, displaying information related to the selected media program, the information includes at least one of actor data, director data and genre data (fig. 18E).

It would have been obvious to combine the actor data of Schein into the media guide of Ellis in view of Needham. This enables the user to find out information about his favorite programs.

Regarding claim 19, Ellis in view of Needham does not disclose prompting the user to at least one of pay a cost and wait a time period before viewing a media program.

However, Schein discloses prompting the user to at least one of pay a cost and wait a time period before viewing a media program (fig. 18c of Schein). It would have been obvious to combine the actor data of Schein into the media guide of Ellis in view of Needham. This enables the user to find out information about his favorite programs.

Claims 20-23, 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks (US 6,515,680) in view of Ellis (US 2003/0146940).

Regarding claim 20, Hendricks discloses a method of displaying a program guide to a user, comprising:

- a) receiving information from a programming provider that indicates suggested media programs (fig. 16-17)
- c) displaying, in a first list, titles of at least some of the suggested media programs (fig. 16-17)

Hendricks does not specifically disclose b) receiving express user references from the user; d) displaying in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences, displaying a first and second list on a single page, a separation of the first and second lists being demarcated.

However, Ellis discloses b) receiving express user references from the user ([0085]); d) displaying in a second list, titles of at least some media programs that are immediately available to the user and that meet at least one of the user preferences (fig. 16a, [0095]), displaying a first and second list on a single page, a separation of the first and second lists being demarcated (fig. 16a, [0066]) *The selectable advertisements can be used to promote the pay per view programs of Hendricks. These two selectable advertisements represent the second list*). It would have been obvious to combine the user preference system of Ellis into the program guide of Hendricks. This would allow the provider to customize the EPG according to the user's preferences.

Regarding claim 21, Hendricks does not specifically disclose receiving metadata associated with at least some media programs, the metadata including

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information that describes the media programs, wherein step d) includes comparing the metadata to the express user preferences, and displaying titles of media programs based on the comparison.

However, Ellis discloses receiving metadata associated with at least some media programs, the metadata including information that describes the media programs, wherein step d) includes comparing the metadata to the express user preferences, and displaying titles of media programs based on the comparison ([0095] of Ellis). It would have been obvious to combine the user preference system of Ellis into the program guide of Hendricks. This would allow the provider to customize the EPG according to the user's preferences.

Regarding claim 22, see claim 8.

Regarding claim 23, Hendricks discloses receiving an indication of a priority of a programming provider (fig. 16-17 of Hendricks);

Hendricks does not specifically disclose receiving user preferences;
receiving respective metadata associated with available media programs;
comparing the user preferences to the metadata;

displaying on a single page and in a first list, a first title of at least one of the available media programs if the respective metadata associated with the at least one of the available media programs matches at least one of the user preferences; and

displaying on a single page and in a first list, a second title of at least another of the available media programs based on the priority of the programming provider, even if the respective metadata associated with the at

least another of the available media programs does not match at least one of the user preferences.

However, Ellis discloses receiving user preferences ([0085] of Ellis); receiving respective metadata associated with available media programs; comparing the user preferences to the metadata ([0094] of Ellis); and displaying on a single page (fig. 16a of Ellis) and in a first list, a first title of at least one of the available media programs if the respective metadata associated with the at least one of the available media programs matches at least one of the user preferences ([0094] of Ellis); and displaying on a single page (fig. 16a of Ellis) and in a first list, a second title of at least another of the available media programs based on the priority of the programming provider, even if the respective metadata associated with the at least another of the available media programs does not match at least one of the user preferences (fig. 16a of Ellis). It would have been obvious to combine the user preference system of Ellis into the program guide of Hendricks. This would allow the provider to customize the EPG according to the user's preferences.

Regarding claim 30, see the rejection of claim 20.

Regarding claim 31, see the rejection of claim 21.

Regarding claim 32, see the rejection of claim 8.

Regarding claim 33, see the rejection of claim 23.

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Claims 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis (US 2003/0146940) in view of Needham US 2003/0177495) in view of Broadus (US 2002/0144264).

Regarding claim 36, Ellis discloses a method for displaying a media guide to a user, comprising:

In accordance with user input:

Receiving media programs via at least one receiving device (fig. 3);

Storing, locally relative to the user on a recordation device, the received media programs ([0054]);

Subsequent to the storing, receiving information regarding media programs which include i) programs that are immediately available to the user via at least one of download, data streaming, and television broadcast to the at least one receiving device ([0043]).

Ellis does not specifically disclose ii) the programs that have been previously stored locally on the recordation device; and subsequent to, and in accordance with the receiving information step, displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a respective title of each of at least one of the programs that are immediately available to the user via at least one of download, data streaming, and television broadcast, and a respective title of each of at least one of the programs that have been previously stored locally on the recordation device.

However, Needham discloses ii) the programs that have been previously stored locally on the recordation device; and subsequent to, and in accordance

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with the receiving information step, displaying, in a single integrated list of recommended titles, at least some of the titles, the at least some of the titles including a respective title of each of at least one of the programs that are immediately available to the user via at least one of download, data streaming, and television broadcast, and a respective title of each of at least one of the programs that have been previously stored locally on the recordation device ([0019, 0023, 0025], fig. 1). It would have been obvious to combine the single integrated list of Needham into the program guide of Ellis. This provides the user with a more comprehensive program guide that informs the user of recorded programs in addition to other programs.

Ellis in view of Needham does not disclose wherein the displaying includes displaying each of the respective titles of the at least one of the programs that have been previously stored with a respective icon indicating that the program has been locally recorded.

However, Broadus discloses wherein the displaying includes displaying each of the respective titles of the at least one of the programs that have been previously stored with a respective icon indicating that the program has been locally recorded (fig. 5). It would have been obvious to combine the recording icon of Broadus into the EPG of Ellis in view of Needham. This would allow the user to easily see any previously recorded programs on an EPG.

Response to Arguments

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In response to applicant's arguments:

¶ [0023] is presented to the user for the purpose of allowing the user to select a broadcast program as a request to have it recorded. Thus, programs that have been recorded would not be presented in the list referred to at ¶ [0023]. Indeed, with respect to recorded programs, Needham et al. merely refer to communicating a copy of a program from a program source to a user's recording device, e.g., in response to a selection of a program of the list of broadcast programs. See Needham et al., ¶ [0018], lines 8 to 9; and ¶ [0022], lines 17 to 19. Accordingly, Needham et al. do not disclose or suggest the feature of *displaying, in a single integrated list of recommended titles, at least some of the titles, including a title of at least one of the programs that have been previously stored locally relative to the user*

Examiner respectfully disagrees. Needham discloses in fig. 1 that all previously broadcast, currently broadcast, and future broadcasts will be displayed in the EPG ([0023]). Recording a program does not remove the program cell from the EPG, the cell merely changes color ([0025]). Therefore, if a user has recorded a previously broadcast program, it will continue to be displayed on the EPG.

In response to applicant's arguments:

the present Office Action at page 11 asserts that the combination of figure 16 of Hendricks et al. and ¶ [0066] and figure 16a of Ellis et al. discloses this feature. However, it is respectfully submitted that, at most, each of Hendricks et al. and Ellis et al. merely indicate a single list of titles on a single page. In this regard, figure 16 of Hendricks et al. merely indicates a single program listing, and ¶ [0066] and figure 16a of Ellis et al. merely indicate a single program listing and selectable...

Examiner respectfully disagrees. Ellis discloses the first and second lists, demarcated, on a single page. Under 8:00PMThu, there is a list of programs that are immediately available to the user and meet at least one of the user preferences (fig. 16a). On the left, there are two advertisements that can represent PPV programs that the broadcast service wants to advertise ([0066],

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fig. 16a). These two advertisements represent the listing of programs which are suggested.

Conclusion

Claims 1, 3-36 are rejected.

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hyun J. Hong whose telephone number is (571)270-1553. The examiner can normally be reached on M-F (9:30a-7:00p).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hirl can be reached on (571)272-3685. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. J. H./
Examiner, Art Unit 2426

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
November 23, 2009